HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.184 of 2006

1. Bajruddin S/o Sri Sharafat
2. Mustakeem S/o Sri Sharafat
3. Abrar S/o Abdul Salam
   All R/o village Jagannathpur
   P.S. Bazpur
   District U. S. Nagar ……..Revisionist

Versus

1. State of Uttaranchal
2. Smt. Aamma W/o Sri Abdul Mohammad
   R/o village Jagannathpur
   P.S. Bazpur
   District U. S. Nagar
3. Addl. Civil Judge (J.D.)/
   Judicial Magistrate, Kashipur
   District U. S. Nagar ……..Respondents

Sri Jagdish Prasad learned counsel for the revisionists.
Sri Amit Bhatt learned A.G.A. for the State.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 02.01.2006 passed by the Judicial Magistrate, Kashipur in criminal case No.854/2005 under section 323, 452, 504, 506 IPC.

2. Brief facts of the case are that on 12.12.2005 the respondent No.2 filed a complaint before the Magistrate against the applicants with the allegations that on 3.12.2005 the applicants entered into the house of respondent No.2 and hurled abuses and also caused injuries on her person. On the said complaint, the learned Magistrate recorded the statement of the witnesses and summoned the applicants vide its order dated 02..01.2006. Feeling aggrieved by this, the applicants preferred the present petition.

3. Learned counsel for the applicants contended that the respondent No.2 in order to take revenge and also to pressurize the eye witness of cognizable offence against her husband and son concocted a false story and file the present compliant. It was further contended that the report was lodged by Chhotey on 03.12.2005 and a case was registered against the husband of respondent No.2 and her son. As a counter blast, the respondent No.2 has filed the present compliant in order to pressurize the witnesses as the present applicants were the witnesses in that case. It was further contended that the story set up by the respondent No.3 in her compliant is full of inherent improbabilities in as much as there appears to be malafide involved in the case. Learned A.G.A. refuted the contention. Perusal of the record reveals that the respondent No.2 has filed a compliant and has examined the witnesses under section 200 & 202 Cr.P.C. There is a medical report which reveals that the respondent No.2 sustained the injury on her person. It is established that there was a prima-facie case to proceed against the applicants-accused. At this stage, this Court cannot say whether the prosecution story is probable or not. It can only be adjudicated at the time of trial. Whereas the mala-fide is concerned, it cannot be said that the compliant is an act of malafide as the applicants were the witnesses against the husband and son of the respondent No.2. At this stage, there is no other litigation pending between the parties. There is a prima facie case against the applicants at this stage. Now, it is to be decided whether the version of the applicants is correct or the version of the respondent No.2 is correct. It is a question of fact, which has to be decided during the trial. This court cannot evaluate the disputed facts of

the case. This Court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trail court.

4. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

5. In view of the above, the petition lacks merit and is dismissed.

(J.C. S. RAWAT, J.)

Dated 27.03.2006

LSR